



Immigration, Refugees  
and Citizenship Canada

Immigration, Réfugiés  
et Citoyenneté Canada

# ENF 15

## Obligations of transporters

Canada 

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### **Updates to chapter**

**2016-11-09**

The chapter ENF 15 was completely updated.

**2009-02-13**

The chapter ENF 15 was completely updated.

## ENF 15 Obligations of transporters

### 1 What this chapter is about

This chapter describes the obligations and liabilities of transporters with respect to the persons they carry to Canada, stipulated in subsection 148(1) of the *Immigration and Refugee Protection Act* (IRPA). Furthermore, it specifies enforcement measures that the Canada Border Services Agency (CBSA) may take against transporters who fail to comply with their obligations.

### 2 Program objectives

The program's objectives are to ensure that transportation companies fulfil their obligations under Canada's IRPA and the operational, procedural and financial liabilities set out in the accompanying *Immigration and Refugee Protection Regulations* (IRPR).

### 3 The Act and Regulations

Sections A148 to A150 include obligations and liabilities of transportation companies.

Sections R259 to R287 provide procedural rules governing transportation companies.

#### 3.1 Required forms

The forms required or referenced are shown in the following table:

Form name	Number
Confirmation by Transporter Regarding Passenger(s) Carried	BSF453
Costs Payable by Transporters	BSF501
Notice to Transporter	BSF502
Official receipt – Cash Security Deposit by a Transporter Company	BSF577
Notice of Detention or Seizure of Vehicle or Prescribed Good (Pursuant to Subsection 148(2) of the Act)	BSF775
Receipt for Prescribed Document under R260	BSF575

### 4 Instruments and delegations

Refer to the transporters section, items 144 to 162, in the document entitled *Designations and Delegations by the Minister of Public Safety and Emergency Preparedness*.

## **5 Departmental policy**

Under the IRPA and its Regulations, commercial transporters must comply with outlined obligations, including

- not carrying improperly documented passengers to Canada;
- presenting passengers for examination at ports of entry (POEs) and holding them until completion of examination;
- ensuring that persons presented for examination have the prescribed documents for travel to Canada;
- carrying persons from Canada who have been directed to leave, allowed to withdraw their application to enter or ordered removed;
- paying administration fees, medical costs and removal costs for certain classes of inadmissible persons;
- complying with directions to deposit security;
- providing prescribed information, including documentation and reports, upon request; and
- providing facilities at POEs for holding and examining persons carried to Canada.

The responsibility to ensure that a passenger is properly documented applies from the time the transporter is boarding at the final embarkation point before arrival in Canada until the examination is declared complete by a border services officer at the POE; entry is authorized or detention of the passenger occurs.

The Guide for Transporters, published by the CBSA, expands on the above information and provides transportation companies with a resource setting out their obligations and liabilities under the IRPA and providing them with guidance on required travel documents for travel to Canada.

## **6 Definitions**

Section R2 defines the following terms:

<b>Term</b>	<b>Definition</b>
Administration fee	A portion of the average cost incurred by Her Majesty in right of Canada in respect of foreign nationals referred to in subsection 279(1) and includes the costs relating to

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	<p>(a) examinations;</p> <p>(b) detention;</p> <p>(c) investigations and admissibility hearings in respect of inadmissible foreign nationals;</p> <p>(d) fingerprinting, photographing and the verification of documents with other governments and national or international police agencies;</p> <p>(e) translation and interpretation; and</p> <p>(f) proceedings before the Immigration Division.</p>
Commercial transporter	A transporter who operates a commercial vehicle.
Commercial vehicle	A vehicle that is used for commercial purposes.
Time of departure	<p>(a) In the case of a commercial vehicle that carries persons or goods by air, the time of take-off from the last point of embarkation of persons before the vehicle arrives in Canada; and</p> <p>(b) in the case of a commercial vehicle that carries persons or goods by water or land, the time of departure from the last point of embarkation of persons before the vehicle arrives in Canada.</p>
Transporter	<p>(a) A person who owns, operates, charters or manages a vehicle or fleet of vehicles;</p> <p>(b) a person who owns or operates an international tunnel or bridge;</p> <p>(c) a designated airport authority as defined in subsection 2(1) of the <i>Airport Transfer (Miscellaneous Matters) Act</i>, or</p> <p>(d) an agent for a person or authority mentioned in paragraphs (a) to (c).</p>
Vehicle	A means of transportation that may be used for transportation by water, land or air

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Vessel	A vessel within the meaning of section 2 of the <i>Canada Shipping Act</i> .
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## 7 Procedures: Obligations and liabilities of transporters

### 7.1 Prohibition to carry improperly documented persons to Canada

Paragraph A148(1)(a) provides that a transporter is prohibited from carrying to Canada a person who is prescribed or does not hold a prescribed document. Therefore, a transporter must ensure that their passengers are properly documented for travel to Canada, as prescribed in section R259.

Prescribed documents include

- a travel document issued to a permanent resident abroad to facilitate their return to Canada;
- passports and travel documents referred to in subsections R50(1) and R52(1);
- a travel document issued by Canada to protected persons;
- visas referred to in sections R6 and R7 required of foreign nationals to enter Canada;
- a permanent resident card; and
- an electronic travel authorization (eTA), referred to in section R7.1.

A transporter must require any person exempt from the need for a passport, visa and eTA to present sufficient evidence of their identity, citizenship or residency.

Canadians, including dual citizens, will need to show proof that they are a Canadian citizen. For purposes of international air travel, the following documents are proof of Canadian citizenship: a valid Canadian passport, a Canadian temporary passport or a Canadian emergency travel document. Canadian citizens returning to Canada who present other documents, such as a certificate of Canadian citizenship, birth certificate, provincial driver's license or foreign passport, instead of a Canadian passport may face delays or be denied boarding by transport companies. Foreign nationals may also face delays or be denied boarding should they not travel with the passport associated with their visa or eTA. Dual Canadian citizens—citizens of both Canada and a visa-exempt country—who currently fly to Canada on their non-Canadian passport will not be eligible to apply for an eTA or a visa.

### 7.2 Persons directed not to be carried by a transporter

Paragraph A148(1)(a) also provides that a transporter is prohibited from carrying to Canada any person whom an officer has directed not be carried. While this authority exists, officers should not direct a transporter not to carry a passenger, except in cases of extenuating circumstances, after having received

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instructions to do so from National Headquarters (NHQ). The CBSA maintains an advisory role, and the decision to deny boarding is the carrier's alone.

Under section R270, the CBSA may notify the transporter that a person they expect to carry is prescribed under section R258.1 or may be a person who does not hold the necessary documents prescribed under section R259. This, however, does not relieve a transporter of their obligation to comply with any requirement imposed by the IRPA or IRPR.

### **7.3 Authority for transporter to hold passenger documents**

Paragraph A148(1)(b) requires a transporter to ensure that the documents referred to in section R259 are available for examination upon arrival at the POE. Section R260 clarifies that a transporter who has grounds to believe that the prescribed documents of a passenger may be disposed of prior to arrival in Canada must hold the documents for presentation to the examining officer in Canada. The transporter is required to issue a receipt for any documents held and to present a copy thereof to the examining officer. The transporter can use the BSF575 form or one of their choosing.

### **7.4 Presenting and holding persons for examination**

Paragraph A148(1)(b) requires transporters to present all persons they carry to Canada for examination and to hold them until the examination is completed. The point at which an examination ends is prescribed in section R37. Section R261 further clarifies that a transporter has complied with the obligation to hold a person for examination when

- an officer informs the transporter that the examination of the person is completed;
- the person is authorized to enter Canada for further examination pursuant to section A23; or
- the person is detained under any Canadian law.

Persons must be held on the vehicles on which they arrive unless facilities for the examination and holding of persons are available at the POE. At international airports, transporters normally hold their passengers inside the terminal building. Persons arriving aboard cargo ships, however, must always be held aboard the vessel until their examination is completed.

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### **7.5 Providing passenger information before arrival in Canada**

#### **7.5.1 Prescribed information**

Pursuant to subsection A148(1)(d) and section R269, all commercial carriers are required to provide the CBSA with Advanced Passenger Information (API) and Passenger Name Record (PNR) information relating to all persons expected to be on board commercial conveyances bound for Canada (air mode only).

This information is collected in order to protect Canadians by enabling the CBSA to perform a risk assessment of travellers prior to their arrival in Canada.

Subsection R269(1) requires a commercial transporter to provide information on all passengers and crew members travelling by commercial vehicle. This includes information such as traveller name, date of birth, citizenship or nationality, gender, and passport or other travel document data as well as all reservation information held by the transporter on passengers to be carried to Canada (e.g., travel itinerary, address, check-in information and any unique passenger reference assigned by the transporter).

This information has been integrated into the Interactive Advance Passenger Information (IAPI), which aims to identify and prevent improperly documented or prescribed persons from boarding flights to Canada and identify travellers who may present admissibility concerns before arrival at a Canadian airport.

#### **7.5.2 Transmission**

Subsection R269(2) requires that all information referred to in subsection R269(1) must be provided by electronic means in accordance with the technical requirements, specifications and procedures for electronic data interchange.

All information is submitted to the IAPI system, which in turn automatically

- verifies the information received against Canada's immigration data to confirm that the passenger has the prescribed travel document (e.g., visa or eTA) or that the traveller is exempt or does not require a prescribed document; and
- sends an automated board or no-board message to the air carrier for each passenger.

These board and no-board messages serve to assist the air carrier in meeting its transporter obligations by validating whether its passengers hold a valid eTA or visa. These interactive messages are a tool to

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further assist airlines in their decision to board and do not replace the requirement for commercial transporters to physically examine a passenger's travel documents.

Subsection R269(3) specifies the required time lines of electronic transmission of the information referred to in subsection R269(1). These transmission timelines vary depending on the type of information required and traveller (i.e., passenger versus crew).

Receiving this information in advance allows for criminality, security and Global Case Management System (GCMS) checks to be conducted by the National Targeting Center (NTC) prior to the arrival of the commercial vehicle.

### **7.5.3 National Targeting Center (NTC)**

Targeting is conducted from a centralized location and is a fully integrated, nationally consistent program that is an integral part of the CBSA's border risk management.

The NTC is a 24/7 operation responsible for ensuring national security and the health and safety of Canadians by increasing Canada's ability to detect and interdict high-risk people and goods at the earliest point in the travel and trade continuum. The NTC conducts targeting activities for people, goods and conveyances in all modes, in accordance with the CBSA/National Targeting Program Mission, Vision, priorities, policies and procedures. The NTC analyzes and risk-assesses information from current intelligence, resultant enforcement actions and compliance data to identify emerging trends and establish intelligence indicators in order to continuously adapt targeting efforts to the areas of highest threat. The NTC has the ability to issue no-board messages to carriers prior to their departure for Canada.

## **7.6 Providing passenger information after arrival in Canada**

Section R264 requires a transporter to provide without delay the following when requested by an officer, provided the request is made within 72 hours after the presentation for examination of the person in Canada:

- a copy of any ticket issued to a person;
- the person's itinerary, including the place of embarkation and dates of travel; and
- information about the number and type of passport or travel or identity document used by the passenger.

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### 7.7 Obligation to provide facilities

Paragraph A148(1)(e) and section R271 require a transporter to provide, equip and maintain facilities for the holding and examination of persons at POEs. Section R271 clarifies that this applies to commercial transporters and transporters who operate airports, international bridges or tunnels. Section R272 further clarifies that a commercial transporter carrying persons to Canada aboard a vessel must provide facilities for examination aboard the vessel.

## 8 Arrival of improperly documented foreign nationals

### 8.1 Reporting arrivals

#### 8.1.1 GCMS entries

Border services officers at airports, land borders and marine POEs should complete a GCMS entry for a foreign national who is improperly documented or inadmissible for any other reason. Officers should ensure that the *Transporter Violation* field is completed when an “Examination” is created. In addition, officers should include remarks to provide further details pertaining to the arrival and, in marine cases, to the security deposit. In an airport case, officers should add remarks to show the exact name of the airline, the inbound flight number, the last port of embarkation, the exact date of arrival and how the airline was identified (airline ticket, boarding pass, disembarkation screening, etc.). For a marine case, officers should add remarks to show the exact name of the ship, the exact date of arrival, the date of desertion, if applicable, the amount deposited as case-specific security, the exact name of the depositor and the date and 6-digit serial number of the official receipt issued to the depositor. For a land-border case, officers should add remarks showing the name of the land carrier and the exact date of arrival.

#### 8.1.2 Support System for Intelligence entries (SSI)

Border service officers must write an SSI report for each arrival of an improperly documented foreign national. The SSI report should be completed within 48 hours of the foreign national’s arrival, and border service officers must ensure that the *Transporter Violation* field has been checked off.

**Note:** Border service officers must also write an SSI report for every foreign national who makes a refugee claim at an airport POE, regardless of whether they are properly documented or not.

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The reporting of an improperly documented arrival is very important. Failure to complete an SSI report could result in the CBSA not being able to collect administration fees or removal costs from the liable transporter.

### **8.2 Advising transporters of the arrival of an improperly documented foreign national**

The BSF502 form has two purposes:

- to notify a transporter that an improperly documented foreign national has arrived; and
- to notify a transporter that it is or may be required to carry the foreign national from Canada.

### **8.3 Evidence establishing transporter liability**

The following documents should be kept on case files as evidence that a transporter has brought an inadmissible foreign national to Canada:

- tickets;
- the passenger manifest;
- boarding passes;
- baggage tags, duty free bags or paper napkins with the transporter logo;
- the passenger's customs declaration (E311 form);
- a print-out of the passenger's travel itinerary;
- a disembarkation screening report (DART); and
- the BSF453 form signed by a representative of the transporter on which the transporter has confirmed the information regarding the passengers carried. If the representative refuses to sign the BSF453 form, the border services officer should annotate the form accordingly, indicating the name of the airline representative who refused to sign.

## **9 Administration fees**

### **9.1 Assessment**

Subsection R279(1) provides that an administration fee must be assessed against a commercial transporter in respect of any foreign national it carried to Canada

- who is inadmissible for failing to be in possession of the documents required for entry;

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- who is prescribed under section R258.1 or whom the transporter has been directed not to carry to Canada;
- who is exempt from the requirement to hold a passport or travel document, but who does not have sufficient evidence of their identity;
- who failed to appear for an examination on arrival in Canada;
- who entered as or to become a member of a crew, and who is inadmissible; or
- who is the subject of a removal order or is allowed under section R42 to withdraw their application to enter Canada, and who fails to leave immediately.

## 9.2 Exceptions

Subsection R279(2) provides that administration fees are waived in respect of

- a person referred to in section R39;
- a foreign national who is prescribed under section R258.1 and in respect of whom notice under section R270 was not given to the transporter before carriage to Canada, and who holds the prescribed documents under section R259;
- a foreign national who does not hold an eTA when one is required under section R7.1 and in respect of whom the CBSA was unable to give notice under section R270 before the foreign national was carried to Canada, but who holds one of the required prescribed documents set out in paragraphs R259(a) to (f); or
- a foreign national other than a foreign national referred to in paragraph R190(3)(c) who seeks to enter Canada to obtain permanent residence and is inadmissible under paragraph A41(a) for failing to obtain a permanent resident visa, as required under section R6, but who is exempt under Division 1 of Part 2 from the requirement to obtain an eTA, required under section R7.1 or exempt under Division 5 of Part 9 from the requirement to obtain a temporary resident visa.

Administration fees are assessed by the Transporter Obligations Program, NHQ, on the basis of SSI reports transmitted to NHQ from POEs or inland offices.

## 9.3 How administration fees are imposed

Border services officers are responsible for reporting in the SSI that an improperly documented person has arrived. The information contained in the SSI report is used by the Transporter Obligations Program in NHQ to determine if an administration fee should be assessed and, if so, to send a Notice of Assessment to the transporter. Transporters may contest the assessment by filing a written submission within 30 days.

### 9.4 Airline Memorandum of Understanding Program [R280]

Subsection R280(1) provides that the administration fee is \$3,200, unless a Memorandum of Understanding (MOU) is in effect between the CBSA and the transporter, in which case, fees are assessed at the rates prescribed in subsection R280(2). Administration fees represent a portion of the average costs incurred by Her Majesty in right of Canada in respect to the examination, detention and processing of inadmissible foreign nationals carried by a transporter.

Subsection R280(2) provides that an MOU between a transporter and the CBSA may include reductions in the amount of administration fees as an incentive for transporters to reduce the number of improperly documented persons arriving in Canada. The MOU Program is only applicable to commercial air carriers. Those air carriers committed to effective document screening and security procedures may benefit from reduced administration fees. Fees are automatically reduced by 25 percent to \$2,400 upon signing and complying with an MOU. Reductions of 50 percent, 75 percent and 100 percent can be granted, depending on the level of interdiction success as measured against the assigned performance standards.

## 10 Detention costs

Transporters have no direct liability for detention costs. The administration fees paid by transporters are intended to offset a portion of the Agency's overall average detention costs. Under paragraph R278(a), however, expenses with respect to the foreign national's accommodation are removal costs payable by a transporter. If a transporter notifies an officer of their intention to make travel arrangements but fails to carry the foreign national within 48 hours or within whatever longer period was agreed upon by an officer, any accommodation costs incurred as a result of the transporter's delay should be reported to the Transporter Obligations Program along with all other removal costs. See sections 11.4 and 11.5.

## 11 Liability to carry foreign nationals from Canada

Paragraph A148(1)(f) requires transporters to carry from Canada any inadmissible foreign nationals they transported to Canada.

### 11.1 When there is no removal order in place

Transportation companies have the obligation to carry from Canada foreign nationals who are

- directed to leave pursuant to subsection R40(1);
- directed back to the United States pursuant to section R41; or

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- allowed to withdraw their application to enter Canada pursuant to section R42.

Part B1 of the BSF502 form should be used to notify the transporter of the requirement to carry a foreign national from Canada.

In the above situations, the expectation is that the foreign national will leave Canada without delay. If the transporter is unable or unwilling to remove or arrange for the immediate transport of the foreign national from Canada, the border services officer may consider authorizing the person to enter, pursuant to section A23, or writing a subsection A44(1) report and making a removal order, in which case procedures in section 11.2 can be applied.

### **11.2 When there is a removal order**

Transporters have the obligation to carry from Canada foreign nationals who are subject to an enforceable removal order, providing their own escorts if escorts are required. If they fail to do so, they must pay all removal costs incurred by the CBSA.

#### **11.2.1 Notification to transporters of the requirement to carry a person from Canada**

Section R276 requires an officer to notify a transporter of the transporter's obligation to carry a foreign national from Canada. There are two types of notification required:

1. A preliminary notification that the transporter may be required to carry a person from Canada [R276(1)(a)]. Part A of the BSF502 form, completed by an officer, is designed for this purpose.

When a transporter brings an inadmissible foreign national to Canada who is made subject to a removal order that is not yet enforceable, the officer must inform the transporter that it is or may be required to carry the person from Canada. This is done in the case of refugee claimants or where there is a stay, and a removal order cannot immediately be enforced.

2. A notification of the requirement to carry a foreign national [R276(1)(b)]. Part B of the BSF502 form, completed by an officer, is designed for this purpose.

When a removal order becomes enforceable, an officer must inform the transporter that it must carry the foreign national from Canada and advise whether escorts are required by means of completing the BSF502 form. The following information should also be provided to the air carrier:

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- client ID;
- *Notice to Transporter* form [BSF502];
- cost of the removal order;
- copy of the deferral of examination, if applicable;
- copy of the passport, emergency travel document, residence card and any transit visa(s);
- original or photocopy of the airline ticket and itinerary;
- airline security approval;
- notice of removal;
- notice of seizure;
- copy of airline booking reference numbers, if applicable;
- criminal record information;
- any medical concerns;
- whether the deportee is willing to leave voluntarily and if any escorts are recommended;
- whether the deportee is willing to purchase their own ticket;
- if visas are required for transport purposes;
- written confirmation that the country(ies) the deportee is transiting through and other airline(s) will accept the deportee (partner agency information is not to be divulged);
- escort officer information; and
- preferred routing and dates, dependent on when transit and airline authorizations and approvals, visas or travel documents are received.

For more information, refer to chapter ENF 10, sections 25 and 30.

There is no time limitation with respect to a transporter's liability to carry an inadmissible foreign national from Canada. Liability continues until a removal order becomes enforceable, regardless of when the transporter brought the foreign national to Canada.

### 11.2.2 Requirement for the transporter to make removal arrangements

Subsection R276(2) requires a transporter, when notified of the requirement to carry a foreign national from Canada, to advise an officer without delay of the arrangements the transporter makes to carry the foreign national from Canada or to notify an officer that they are unable to make such arrangements.

The transporter must carry the person from Canada within 48 hours of advising an officer of the arrangements made or within any longer period of time agreed upon by the officer. Subsection R273(2) provides that transporters must transport the foreign national who is subject to an enforceable removal order from wherever the foreign national is situated in Canada to the vehicle in which they will be carried from Canada.

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**Note:** Pursuant to section 5.10 of Annex 9 of the Convention on International Civil Aviation (Chicago Convention), an airline that is required to carry a foreign national from Canada “shall not be precluded from recovering from such person any transportation costs involved in his removal”. Nevertheless, the airline’s obligation under sections R273 and R276 to carry the inadmissible foreign national from Canada and to adhere to the stipulated time frames takes precedence over section 5.10. The CBSA should never allow the airline to postpone carrying the foreign national from Canada while it attempts to determine whether the passenger is willing or able to reimburse any of the costs. If the airline wishes to attempt to recover costs, it must pursue the matter after the person has been removed.

### **11.2.3 Removal arranged by an officer**

In cases when a removal order against a foreign national is enforceable, section R276 stipulates that an officer shall make removal arrangements under the following circumstances:

- the transporter fails to advise an officer without delay of the transporter’s arrangements after having been notified of the requirement to carry the foreign national;
- the transporter fails to carry the foreign national from Canada within 48 hours of having advised an officer of the transporter’s arrangements or within any longer period of time agreed upon by the officer; and
- the officer finds the arrangements proposed by the transporter to be unacceptable.

Most shipping companies will be unwilling or unable to arrange for inadmissible foreign nationals to be carried from Canada, particularly because they will have already deposited security to cover removal costs. They may, therefore, not wish to be notified each time a foreign national they brought to Canada is ready to be removed. If this is the case, they should advise the CBSA of this in writing, after which officers will no longer be required to provide them with notification each time a removal order becomes enforceable. Officers should ensure a copy of the written instructions from the transporter is placed on the subject’s file.

### **11.2.4 Requirements for acceptance of arrangements**

The travel arrangements made by a transporter to carry and escort a foreign national from Canada must be acceptable to an officer. Section R276 provides that the arrangements a transporter makes to carry a foreign national from Canada must meet the following criteria:

- the itinerary must begin where the foreign national is situated in Canada and end in the country and city to which the foreign national is to be removed, following the most direct routing possible;

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- the itinerary must not include a country through which transit has not been approved; and
- the period of time between any connections does not exceed 12 hours.

### 11.3 Relief from obligations

Section R277 provides that a transporter is relieved of their obligation to carry from Canada any foreign national who was authorized to enter and remain in Canada on a temporary basis or held a temporary resident or permanent resident visa at the time of their examination. A transporter is always required to carry from Canada a member of their crew or a foreign national who entered Canada to become a member of their crew.

### 11.4 Liability for removal costs

A transporter who is required to carry from Canada a foreign national they brought to Canada is also liable to reimburse all costs of removal and, if applicable, attempted removal incurred by the CBSA in respect of that person. Section R278 describes the various types of removal costs for which a transporter may be liable as

- expenses incurred within or outside Canada with respect to the foreign national's accommodation and transport;
- accommodation and travel expenses incurred by any escorts;
- fees paid in obtaining documents for the foreign national and any escorts;
- the cost of meals, incidentals and other related expenses;
- regular and overtime wages paid to escorts and other personnel accompanying the foreign national; and
- costs or expenses for interpreters, medical or other personnel assisting with the removal.

**Note:** Refer to chapter ENF 17 for marine transporters' liability for removal costs.

### 11.5 Reporting of removal costs to the Transporter Obligations Program

The recovery of removal costs for which transporters are liable falls under the responsibility of the Transporter Obligations Program, Programs Branch.

In order to ensure that removal costs are recovered from the liable transporter, CBSA officers should complete the BSF501 form and

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- email the completed BSF501 form and a copy of the e-ticket of the person removed and escorts (if applicable) to the Transporter Obligations Program; or
- mail the completed BSF501 form to the Stakeholder Engagement and Outreach Unit, Transporter Obligations Program, CBSA.

The Transporter Obligations Program reviews each form and, after obtaining any missing information or making any necessary corrections, assesses the removal costs. An itemized invoice is sent by the Transporter Obligations Program to the carrier via email. If the carrier is no longer in operation, the Transporter Obligations Program will deduct the removal costs from the airline security that has been deposited with the CBSA.

## 12 Medical examination and treatment

Pursuant to paragraph A148(1)(g), a transportation company must pay all prescribed costs and fees relating to its obligation, and under paragraph A148(1)(c), it must arrange for the medical examination, observation and treatment of a person it carries to Canada. As per subsection R263(3), a commercial transporter must arrange for the medical examination of a foreign national who is required to submit to one under paragraph A16(2)(b) and for any medical examination, surveillance or treatment that is imposed under section R32.

### 12.1 Exceptions

Subsection R263(1) does not apply if the foreign national

- holds a temporary or permanent resident visa at the time of their examination, and the foreign national's health condition is not a result of the commercial transporter's negligence; or
- has been authorized to enter Canada and is not a member of the crew.

**Note:** The Interim Federal Health Program (IFHP) provides health-care coverage to eligible beneficiaries, including basic, supplemental and prescription drug coverage. Foreign nationals who arrive and require immediate medical attention should only be issued coverage if they qualify under one of the IFHP eligible groups (e.g., refugee claimant, ineligible refugee claimant but eligible to apply for a pre-removal risk assessment [PRRA], detainee)

Full IFHP details, including determining eligibility and issuing coverage in GCMS, can be found in chapter IR 10.

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### 12.2 Duration

The transporter's liability continues as long as

- the foreign national requires medical treatment and has not been authorized to enter Canada as a temporary or permanent resident; or
- the transporter's crew member remains in Canada.

### 12.3 Billing of medical costs to transporters

When a transportation company is liable for the medical costs of a foreign national, the CBSA should provide the medical service provider with the name and contact details of the transportation company to which invoices should be directed. The wording suggested hereafter may be adapted for use in such cases:

To: *(Name of medical service provider)*

From: *(Name and address of CBSA official)*

Re: *(Name of patient)*

The above-noted person is not eligible for coverage under the Interim Federal Health Program (IFHP). Pursuant to paragraph 148(1)(g) of the *Immigration and Refugee Protection Act* and section 263 of the *Immigration and Refugee Protection Regulations*, the transporter is liable to pay medical costs. Therefore, if the patient is uninsured and is unable to pay for health care services, medical costs should be billed to the transportation company that brought this person to Canada, whose name and contact details are shown below. Invoices sent to the IFHP or to the Canada Border Services Agency in respect of this patient will not be paid.

cc *(Name of transportation company)*

Questions regarding the billing of medical costs to transportation companies can be directed to the Transporter Obligations Program, NHQ.

## 13 Security deposits

Paragraph A148(1)(h) gives broad authority to require security from transporters to ensure compliance with their obligations. Section R283 provides that the Minister may require commercial transporters to

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provide security. The security may relate to a specific inadmissible foreign national or be general security from which administration fees and removal costs for which the commercial transporter is liable may be deducted.

### **13.1 Case-specific security deposits (marine mode)**

Ship owners, operators and their agents in Canada may be required to deposit security in respect of inadmissible foreign nationals who arrive in Canada aboard vessels as stowaways, crew members or passengers. The authority to direct transporters to deposit case-specific security in the marine mode is delegated to border services officers. The cash amount required in each case is currently set by NHQ at \$25,000 per person. This amount is intended to cover the administration fee of \$3,200 and the estimated average costs of a removal under escort. Officers may, with the approval of the Manager of the Transporter Obligations Program, direct transporters to deposit larger or smaller amounts where warranted. For example, the amount of security requested for a stowaway from Africa may be greater than the amount for a stowaway from Europe, given the significantly higher costs of removals to Africa.

Directions for cash security deposits should be in writing, using the Direction to Deposit Security standard letter format (see Appendix A), which is adaptable, as required. When security is received, the official receipt form BSF577 must be completed for each foreign national and the original given to the transporter, with copies distributed as indicated.

Administration fees and any removal costs for which the transporter becomes liable in respect of the foreign national are automatically deducted from security. Case-specific security is retained by the CBSA until all enforcement action against the inadmissible foreign national has been finalized and until all amounts for which the transporter is liable have been paid.

### **13.2 General security deposits (air mode)**

Most airlines engaged in the international transportation of passengers to and from Canada are required to deposit general security in the form of cash. The authority for requiring transporters to deposit general security is delegated to the Manager, Transporter Obligations Program, NHQ.

The general security deposit is a prerequisite for any MOU between a transporter and the CBSA. Only transporters that have entered into an MOU with the CBSA are eligible to deposit general security in a form other than cash.

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The amount of general security is determined in accordance with subsection R283(2) based on the transporter's compliance with the Act and the anticipated risk of inadmissible foreign nationals being carried to Canada.

General security is not returned to a transporter that ceases to operate in Canada until enforcement action against all inadmissible foreign nationals previously brought to Canada by that transporter has been completed and until all amounts for which the transporter is liable have been paid.

In the event of unscheduled aircraft landings in Canada for the purpose of disembarking passengers who are ill or who were a threat to flight security, officers should seek guidance from the Manager, Transporter Obligations Program, to determine if a security deposit is warranted.

### 13.3 Security deposits (land mode)

The operators of trains, buses, ferries, taxis and other cross-border passenger transportation companies that operate at the land border could be required to deposit security in respect of any inadmissible foreign national they bring to Canada.

Officers should consult with the Manager, Transporter Obligations Program, whenever they believe that case-specific security may be warranted.

## 14 Ensuring transporter compliance

Subsection A148(2) provides the authority to detain, seize or forfeit a vehicle or other prescribed good of a transporter that fails to comply with an obligation under the IRPA (e.g., to deposit security or failure to pay fees or costs for which the transporter is liable).

The enforcement measures that may be taken against a transporter are

- detention, seizure or forfeiture of a vehicle or other prescribed good under subsection A148(2);
- registry of a certificate in the Federal Court under section A146.

**Note:** The authority to detain or seize vehicles has been delegated to the regions for reasons of operational expediency. However, the Director General, Traveller Programs Directorate, NHQ, should be informed prior to seizing or detaining any commercial aircraft pursuant to subsection A148(2).

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### 14.1 Detention of a vehicle or prescribed good

Under subsection A148(2), the detention of a vehicle is an enforcement option when a vehicle or prescribed good is physically located in Canada and is still being operated by the transporter. Section R284 clarifies that a prescribed good is any good that is not land, a building or a transportation facility.

Delegated authority to detain a vehicle is identified in the document entitled *Delegations and Designations under the responsibility of the Minister of Public Safety*. See previous note.

**Note:** The detention of a vehicle involves the use of the *Notice of Detention or Seizure of Vehicle or Prescribed Good* form [BSF775]. The Manager, Transporter Obligations Program, NHQ, may request regions to detain vehicles in order to obtain payment of overdue administration fees and removal costs.

The vehicle is detained as soon as an officer delivers a signed BSF775 form to the master or any other person in charge of the vehicle. The delivery of the notice triggers the detention. As soon as the notice of detention has been delivered, the officer should transmit copies to the following local authorities, as applicable, to ensure that the vehicle will be prohibited from leaving:

- Canadian Coast Guard Vessel Traffic;
- local vessel pilotage authority; and
- airport control tower.

The vehicle must be released as soon as the transporter remits the sum of money required or complies with their obligation. When the vehicle is released, the above-mentioned authorities must be immediately notified.

### 14.2 Seizure of a vehicle or prescribed good

Although a vehicle may be seized without it first being detained, seizure should be used as a last resort. A vehicle that is detained remains in the possession of the transporter. By seizing a vehicle, however, the CBSA takes possession of the vehicle and thereby becomes liable for the costs of handling, maintaining and disposing of it.

The delegated authority to seize a vehicle under subsection A148(2) is identified in the document entitled *Delegations and Designations under the responsibility of the Minister of Public Safety*. See previous note in section 14.

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Subsection R286(1) provides that, following a seizure, the Minister shall make reasonable efforts to give notice of the seizure to the lawful owner.

The seizure of a vehicle involves the use of the *Notice of Detention or Seizure of Vehicle or Prescribed Good* form [BSF775]. The vehicle is seized as soon as an officer delivers a signed BSF775 form to the master or any other person in charge of the vehicle. As soon as the notice of seizure has been delivered, the officer should transmit copies of the notice to the local authorities, as applicable.

The officer should transmit a copy of the BSF775 form to the harbour master (for a ship) or the control tower (for an aircraft), giving specific details, such as the vehicle identification (ship's name and registry, or flight number or type of aircraft and registration number), the name of the transporter and the authority for seizing. This notification is necessary so that the harbour master or control tower can deny the vehicle permission to leave port or take off.

### **14.3 Disposition of seized vehicle or prescribed good**

Subsection R286(2) provides that a vehicle or good seized under subsection A148(2) can be sold and the amount payable by the transporter deducted from the proceeds of the sale, unless the transporter secures the object's release by providing

- an amount equal to the value of the object at the time of seizure and any expenses incurred in the seizure or detention;
- the security required under the Act or any costs and fees for which the transporter is liable, including the expenses incurred in seizing and detaining the object; or
- evidence that the transporter is in compliance with their obligations and has reimbursed the government for any expenses incurred in the seizure or detention.

### **14.4 Storage and security of a seized vehicle or good**

When a vehicle or good is seized, the CBSA should consult the transporter to the greatest extent possible to ensure that the vehicle is handled properly. A manager directing the seizure of the vehicle or good should commission an insurance appraisal to establish the value and condition at the beginning of the seizure period. Officers should ensure that the CBSA is responsible for ensuring procedures are in place to protect the seized objects. These procedures often involve

- arranging to have a vehicle towed to another location;
- hiring a temporary crew to move the object;
- ensuring the security of the object by contracting a security firm;

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- safeguarding the vehicle's log books;
- taking preventive steps, if necessary, to protect the object from damage in cold weather.

For further information on seizures, see chapter ENF 12, which deals with seizures under section A140 and also includes information concerning the disposition and disposal of seized goods that is applicable to seizures under subsection A148(2).

### 14.5 Registry of a certification in the Federal Court

If the transporter does not have vehicles or goods in Canada that may be detained or seized, the amount payable by the transporter may be collected by registering a certificate in the Federal Court pursuant to section A146.

The authority to certify before the Court that an amount payable by a transporter has not been paid is delegated to the Comptrollership Branch, NHQ.

Once registered, the certificate has the same effect as if it were a Federal Court judgment. This means that the Agency may issue what is known as a writ of *fiери facias* to a sheriff, who can then execute the judgment against assets of the company for the amount payable. In practice, this usually involves the seizure of the amount payable from the transporter's bank account.

The transporter is liable for the costs of registering a certificate.

Where a vehicle cannot be detained to enforce a direction for the deposit of security, regional officers have the option of reporting the transporter's non-compliance to the Transporter Obligations Program in order for the amount payable to be registered.

## 15 Transporter Obligations Program contact information

The Transporter Obligations Program, Programs Branch, NHQ, can be contacted by

- e-mail; or
- mail at the Stakeholder Engagement and Outreach Unit, Transporter Obligations Program, Programs Branch, CBSA.

## Appendix A Direction to deposit security

[Name of shipping agent]

[Mailing address]

[City, Province]

[Postal code]

[Date]

RE: [Name of ship]

To whom it may concern:

Pursuant to paragraph 148(1)(h) of the *Immigration and Refugee Protection Act*, [name of shipping agent] is hereby directed to deposit with Her Majesty in right of Canada the sum of \$25,000 in Canadian currency. The security should be in the form of a cheque or money order payable to the Receiver General for Canada. This direction is issued as a result of the conveyance to Canada of [name(s) of person(s) concerned] as [(a) stowaway(s)]/[(a) crew member(s)].

Compliance with this direction is a statutory requirement. Non-compliance may result in the detention of any vessel fully or partly owned by the company concerned, pursuant to subsection 148(2) of the Act.

The security deposit may be submitted to the undersigned or to any other departmental official by arrangement with the undersigned.

Yours truly,

[Signature of officer]

[Name of officer]

[Title]

[Telephone number]